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United States General Accounting Office  
Washington, DC 20548

Office of  
General Counsel

In Reply  
Refer to: B-199123 (RCP)

SEP 22 1980

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Mr. William E. Foley, Director  
Administrative Office of the  
United States Courts  
Washington, D.C. 20544

Dear Mr. Foley:

We refer to your letter dated June 5, 1980, in which you request our opinion as to whether Mr. Philip L. Swihart, who is presently chief deputy clerk to the United States District Court for the Eastern District of Missouri, may be reimbursed for travel, transportation and relocation expenses in connection with his transfer of official station in April 1978.

You indicate that Mr. Swihart was employed from 1970 until 1978 as deputy clerk in charge of the Fort Wayne divisional office of the United States District Court for the Northern District of Indiana. In April 1978, he assumed the duties of chief deputy clerk in the Eastern District of Illinois. In connection with this transfer Mr. Swihart was authorized reimbursement of his expenses for travel and transportation of household goods and personal effects. You further state that this authorization was made pursuant to 5 U.S.C. § 5724(a) on the basis that Mr. Swihart was being transferred in the interest of the Government from one official station to another for permanent duty. As required by section 5724(i), he subsequently executed a written agreement to remain in the Government service for 12 months following the date of his transfer, unless separated for reasons beyond his control and that are acceptable to the agency concerned. No claim for the actual payment of travel or transportation expenses



B-199123

arising from this relocation was made at that time. On October 20, 1978, (approximately 6 months after his transfer to the Illinois position), Mr. Swihart resigned his post. The circumstances of this resignation, as outlined in attachments to your letter, appear to represent matters of common interest that both Mr. Swihart and the Chief Judge for whom he worked found mutually desirable.

Following a break in his Government service from October 20 to December 22, 1978, Mr. Swihart resumed employment with the federal judiciary on the latter date as a deputy clerk in the Eastern District of Missouri, stationed at St. Louis. He continues to serve in that court and has subsequently been promoted to chief deputy clerk and administrative assistant to the chief judge. Because his current place of employment is in the same metropolitan area as was his last position, Mr. Swihart continues to reside in O'Fallon, Illinois, where he has lived since shortly after he assumed the position in the Eastern District of Illinois in April 1978. He has now submitted materials in support of a claim in the amount of \$8,194.92, to be reimbursed from the appropriated funds available to your office for the travel and transportation expenses incurred incident to his 1978 relocation from Fort Wayne, Indiana, to O'Fallon, Illinois.

In evaluating Mr. Swihart's claim you stress that your concern is whether the 12-month period of continued service which is required by 5 U.S.C. § 5724(i), and for which Mr. Swihart contracted, must be continuous in order for the payment of his relocation expenses from government funds to be lawful. In response to your own concern you have also provided a legal analysis favorable to Mr. Swihart's position. However, we do not need to reach the question of statutory construction in regard to the 12-month service requirement because other pertinent provisions of 5 U.S.C. § 5724(i) may control Mr. Swihart's claim, thus obviating the need for a decision of the Comptroller General on the 12-month service requirement.

B-199123

Specifically, under the provisions of 5 U.S.C. § 5724(i) an agency may pay specified travel and relocation expenses when an employee is transferred within the continental United States only after the employee agrees in writing to remain in the Government service for 12 months after his transfer, unless the employee is separated for reasons beyond his control that are acceptable to the agency concerned. It has been the consistent policy of this Office, in regard to the release of an employee from a valid Government service agreement, that the responsibility for the determination as to whether an employee's separation from the service is for a reason beyond his control and acceptable to the agency concerned rests primarily with the employing agency. In the absence of evidence that such a determination is arbitrary or capricious, the decision of the agency will be upheld. See 56 Comp. Gen. 606 (1977) and decisions cited therein.

Under 5 U.S.C. § 5721, the Administrative Office of the United States Courts is an agency for the purpose of making such a determination. Therefore, we believe that your agency's determination that Mr. Swihart's resignation in October 1978, was acceptable within the meaning of 5 U.S.C. § 5724(i) would independently establish his entitlement to the reimbursement in question by releasing him from the service requirement.

Accordingly, we are not rendering a decision in response to your letter. We believe that the above information will assist you in evaluating Mr. Swihart's claim. If, after considering the foregoing, you need further assistance on this matter, please let me know.

Sincerely yours,

Robert L. Higgins

Robert L. Higgins  
Assistant General Counsel